IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6249 OF 2005

Chandrakant Shankarrao Marne ..Petitioner.

Vs.

Union of India & anr. ..Respondents.

....

Mr.D.V.Gangal for the Petitioner.

Mr.S.S.Pakale with Mr.Y.S.Bhate for the Respondents.

....

CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

23rd September, 2005.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner has approached this Court against the order dated 25th August, 2005 passed in Original Application No.216 of 2005. The Application filed by the Petitioner against the communication by the Respondent dated 23rd November, 2004 refusing to accept voluntary retirement has been dismissed.

3. The Petitioner by a letter dated 30th September, 2004 had written to the General Manager Ammunition Factory in the following words :

> "I hereby tender Three Month’s Notice of Voluntary retirement for service if and only if I have completed 20 years of qualifying service for Pensionery benefits. The request of voluntary retirement is valid provided I have completed 20 years of qualifying service of Pensionery Benefits. Otherwise this letter is no letter of Voluntary retirement. I want all the benefits of C.C.S.C. Pensionery Rules, 1972 and also all retirement benefits be granted to me."

In answer, the Respondent wrote to the Petitioner in the following words:

> "With reference to your application cited above, your request for voluntary retirement from service cannot be acceded to, since your total service though counts

> 19 years but the qualifying service rendered by you is less than 12 years. Hence your request for voluntary retirement from service cannot be considered."

4. The relevant portion of Rule 48-A reads as under :

> "(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service."

Rule 48-A(2) then reads as under :

> "(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:
>
> Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from

the date of expiry of the said period."

5. The Learned Tribunal in the impugned order has recorded a finding that the Petitioner was intimated by letter dated 23rd November, 2004 about non-acceptance and that was before the period as required under Rule 48-A.

6. The contention of the Petitioner, however, is that the Petitioner had completed 20 years of service. Once that being the case, the only reason given for refusing to accept the voluntary retirement does not subsist and under these circumstances, considering the proviso to Rule 48-A, the requirement has become effective from the date of expiry of the said period. The learned counsel in support of his contention has firstly placed reliance on the judgment of the Apex Court in a case of **Union of India & Others v. Sayed Muzaffar Mir** (1995 SCC (L & S) 256). In that case, a declaration was sought by the Respondent that he had retired from service with effect from 22nd October, 1985 and the proceedings pending against him were of no consequence. The Tribunal had taken a view that Respondent by a letter dated 22nd July,

1985 had given three months notice to Railways to retire from service in terms of the Rules existing and the period of three months had expired on 21st October, 1985. The Court noted the contention on behalf of the Appellant before the Apex Court that though the period of three months has expired on 21st October, 2005 and the Respondent was under suspension, the Railways were within their right not to permit premature retirement. The Apex Court noted that there were two answers to the submission; the first is that the provision would require passing an appropriate order when the Government servant is under suspension either of withholding permission to retire or retaining of the incumbent in service. No such order was passed as inspite of the fact that a right was given to the appropriate/ competent authority, as the same was not exercised, the same was of no avail. Secondly the Court noted that when a notice is given under Rule 56(c) of the Fundamental Rules, that does not require any acceptance and in the light of that dismissed the appeal.

7. In the instant case, the Petitioner had approached the Central Administrative Tribunal in

the matter of his dismissal from service. By order dated 14th September, 2004, the Learned Members of the Tribunal were pleased to set aside the punishment imposed for reasons set out in the order, but while doing so were pleased to direct as under :

> "The applicant shall be under deemed suspension from the date of removal till the culmination of the disciplinary proceedings as observed in the foregoing paragraphs."

In other words, it is clear that though the order of termination was set aside, the Petitioner was continued as deemed suspended from the date of the order termination. We have set this out as it had a bearing on the case as during the period of suspension and the payment of subsistence allowance, there is a suspension of relationship of an employer and employee. This is essential for the purpose of deciding whether the Petitioner had completed 20 years of service. Reliance is also placed on the judgment in **K. Padmanabha Rao v. Accountant General, A.P.I. Hyderabad and Others**

(1987) 4 Administrative Tribunals Cases 756. In that case, the Apex Court observed that once a suspended employee is allowed to retire instead of continuing the suspension beyond retirement date, he is entitled to full pay and allowance. We are not really concerned with the proposition as set out therein.

8. The question therefore before this Court is whether the contention as urged on behalf of the Petitioner that as the Respondent had not intimated non-acceptance for a reason of either being suspended and/or because there were disciplinary proceedings by operation of law his notice of voluntary retirement has been accepted and consequently the order of the Tribunal is required to be set aside. We have earlier reproduced the letter of voluntary retirement as addressed by the Petitioner. That letter would clearly show that it was conditional on the Respondent holding that the Petitioner had completed 20 years of qualifying service and only in the event the Petitioner had completed 20 years of qualifying service, the said letter was to be treated as a letter of voluntary retirement, in other words, on the Respondents

coming to a conclusion or a decision that the Petitioner had completed 20 years of service. The Respondents on 22nd November, 2004 intimated to the Petitioner that he had not completed 20 years of service. Once that being the case, the conditional letter of 30th September, 2004 cannot be treated as a letter of voluntary retirement and on this ground alone the Petition has to be rejected.

9. Apart from that,the Petitioner herein is seeking to count the period of suspension for the purpose of completing 20 years of service. As long as the enquiry is not completed or the Petitioner had not retired from service without the Respondents passing an order extending the period of service, so as to enable the enquiry to be completed, the period of suspension cannot be treated as on duty. As noted earlier, there is a suspension of relationship of an employer and employee during the period of suspension and what the suspending employee gets during the period are not wages, but subsistence allowance. The Tribunal was therefore right in holding that the said period was not the period spent on duty as only on the culmination of the disciplinary proceedings would

such an order be passed. For the aforesaid reasons therefore we find no merit in the Petition. In the light of that, rule discharged. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)